IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-1' NEW DELHI

Before Sh. N. K. Saini, AM And Ms. Suchitra Kamble, JM

ITA No. 2073/Del/2014 : Asstt. Year: 2009-10

Akzo Nobel India Ltd., (formerly known as Akzo Nobel Car Refinishes India Pvt. Ltd.), DLF Cyber Terraces, Building No. 5, Tower-A, 20th Floor, , DLF Cyber City, Phase-III, Gurgaon-122002	Vs	DCIT, Circle-2(1), New Delhi-110002
(APPELLANT)		**(RESPONDENT)**
PAN No. AABCA0197Q		

ITA No. 2468/Del/2015 : Asstt. Year: 2010-11

Akzo Nobel India Ltd., Building No. 5, (Epitome Building), 20th Floor, Tower A, DLF Cyber City, Gurgaon-122002	Vs	DCIT, Circle-2(1), New Delhi-110002
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACI6297A		

Assessee by : Sh. Vishal Kalra, Adv. &
Ms. Reema Malik, CA
Revenue by : Sh. Sanjay I. Bara, CIT DR

Date of Hearing : 02.07.2018		**Date of Pronouncement: 10.07.2018**

ORDER

Per N. K. Saini, AM:

These two appeals are filed by the assessee against the separate order dated 31.01.2014 and 23.02.2015 for the assessment years 2009-10 and 2010-11 respectively passed by the AO u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Since, the common issues are involved in these appeals which were heard together, so, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 2073/Del/2014 for the assessment year 2009-10. Following grounds have been raised in this appeal:

"1. That the Assessment Order passed in pursuance to the directions issued by the Learned Dispute Resolution Panel ('DRP') is a vitiated order as the Ld. DRP has erred both on facts and in law, in not considering the submissions made by the Appellant and in confirming the addition made by the Ld. Assessing Officer ('AO')/ Ld. Transfer Pricing Officer ('TPO') to the Appellant's income.

2. That on the facts and circumstances of the case and in law, the Ld. AO [following the directions of Learned Dispute Resolution Panel ("Ld. DRP")] erred in assessing the returned loss of the appellant of Rs.49,664,891 at the income of Rs. 65,58,117.

3. The Ld. Transfer Pricing officer (TPO)/ Ld.DRP erred on facts and circumstances of the case and in law by confirming an Transfer Pricing adjustment amounting to INR 56,223,008 holding that the international transaction pertaining to provision of contract research and development services ('R&D segment') do not satisfy the arm's length principle envisaged under the Act and in doing so have grossly erred in:

3.1 not appreciating that the Appellant had prepared the Transfer Pricing documentation bona fide and in good faith in compliance with the provisions of Section 92D of the Act read with Rule 10D of the Income Tax Rules, 1962 ('Rules') and selected uncontrolled comparable companies based on a detailed Functional, Asset and Risk ('FAR') analysis, following a methodical and consistent benchmarking process in respect of contract research and development services.

3.2 rejecting the arm's length margin computed by the Appellant for contract research and development services segment using multiple year / average data and instead of using current year data for comparable companies, i.e., data for FY 2008-09,

despite the fact that the same was not available with the Appellant at the time of preparing its transfer pricing documentation.

3.3 ignoring the comparability analysis undertaken by the Appellant for its contract research and development services and thereby performing his own comparability analysis in making adjustment to the transfer price of the Appellant.

3.4 ignoring the limited risk nature of the contract research and development services provided by the Appellant and in not providing an appropriate adjustment towards the risk differential.

3.5 denying the benefit of (+/-) 5% range mentioned in the proviso to Section 92C(2) of the Act in determination of the arms length price.

4. The Ld. Transfer Pricing officer (TPO)/ Ld.DRP erred in considering the payment of Rs. 41,942,829 by the Appellant towards the administrative services received from the Associated Enterprises("AEs") to be 'Nil', and in doing so grossly erred in law and in facts for the following reasons:

4.1 applying the Comparable Uncontrolled Price method and rejecting the application of Transactional Net Margin Method as most appropriate method for determination of arm's length price in case of payment of administration fee.

4.2 drawing conclusion as regards to no economic value was derived and that no tangible and substantial commercial benefit was derived out of services for which the admin fee was paid.

4.3 disregarding the collective evidences provided in justification of the arms length nature of international transactions pertaining to the payment of administration fee.

4.4 the support services are in the nature of stewardship as it result into benefit to the AEs and such coordination actuary is required to be carried out by the parent companies to improve its global presence and global profit.

5. The Ld. AO/ Ld. DRP erred in enhancing the income of the Appellant on account of interest on overdue receivables by Rs. 11,56,859 without stating any cogent reasons and basis for interest calculation. The Ld TPO grossly erred in charging interest to the receivables which were outstanding in ordinary course of business and has been collected in a reasonable period and in doing so grossly erred in law and in facts for the following reasons:

5.1 applying an arbitrary interest rate of 14.25 percent (lending rate of SBI plus 150 basis points) for calculating interest on outstanding receivables.

5.2 not considering the fact that the amount outstanding in the name of AEs represents the normal course of business activity and looking into the commercial expediency of the business, this situation prevails for both receipts and payments to/from the AEs.

6. That the Ld. AO has grossly erred in law in levying interest under section 234D of the Act and also withdrawing interest under section 244A of the Act.

7. On the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 271(1)(c), 271AA and 271BA of the Act.

That the above grounds of appeal are independent and without prejudice to each other.

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal."

4. The assessee also moved an application dated 05.04.2018 under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 for admission of the additional ground by stating as under:

*"**Re: <u>Request for admission of additional ground of appeal under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963.</u>***

The Appellant requests to allow raising of the following ground of appeal in addition to those filed for adjudication before the Hon'ble Income Tax Appellate Tribunal ("Hon'ble Bench"):

Ground No. 8

8. That on the facts and circumstances of the case and in taw, the orders passed by the Assessing Officer ("AO") / Dispute Resolution Panel ("DRP") / Transfer Pricing Officer ("TPO") are bad in law and void ab initio as the same have been passed on a non-existent entity, namely Akzo Nobel Car Refinishes India Private Limited.

The brief facts giving rise to the aforesaid ground of appeal are stated hereunder:

The Appellant was incorporated on December 5, 1997 as a wholly owned subsidiary of Akzo Nobel Coatings International BV, Netherlands. The Appellant sells high quality coatings for the car refinish market. It is also engaged in selling ancillary products used with the coatings such as hardeners, additives, thinners, color mixing machines, etc. In addition, the Appellant also undertakes contract research and development for Akzo Group.

It is submitted that the erstwhile Akzo Nobel Car Refinishes India Private Limited amalgamated with Akzo Nobel India Limited with effect from April 01, 2011 vide order of the Hon'ble Karnataka High Court dated April 18, 2012 ***(Copy of the order enclosed as Annexure 1).***

Further, the AO was informed about the scheme of amalgamation vide letter dated June 11, 2012 ***(Copy enclosed as Annexure*** *2). However, the lower authorities namely the AO / DRP / TPO, have framed / passed orders on the erstwhile entity i.e. Akzo Nobel Car Refinishes India Private Limited. The orders, thus, passed by the lower authorities are bad in law and void ab initio as the same have been passed on a non-existent entity.*

Further, it is respectfully submitted that the issue involved in the said additional ground of appeal also stands covered in favor of the Appellant by the jurisdictional High Court's decision in the case of ***Spice Entertainment Limited vs Commissioner of Service Tax (ITA 475, 476 of 2011) (Delhi),*** *which has now been* ***affirmed by***

the Hon'ble Supreme Court vide order dated November 2, 2017 in CA No. 285 of 2014.

Reliance is also placed upon the following judicial precedents:

- ***Akzo Nobel Chemicals (India) Ltd. (merged with Akzo Nobel India Limited) Vs. The Dy. Commissioner of Income Tax [ITA No.l225/PUN/2015] - Hon'ble Pune ITAT***
- ***CIT(C)-II Vs. Micra India Pvt. Ltd. [ITA 441, 444, 445, 446, 452, 461 of 2013] -Hon'ble Delhi High Court***
- ***DCIT Vs. Transcend MT Services Pvt. Ltd. [ITA No. 2697/Del/2014] - Hon'ble Delhi ITAT***
- ***Genpact Infrastructure (Bhopal) Pvt. Ltd., (now merged with Genpact India) Vs. DCIT [ITA No. 2025/Del/ 2014] Hon'ble Delhi ITAT***
- ***Shell India Markets Private Limited Vs. ACIT [ITA NO. 1055/BANG/2011] - Hon'ble Mumbai ITAT***

In light of the above settled legal position, the assessment completed on the erstwhile entity which had ceased to exist pursuant to the scheme of amalgamation, is a jurisdictional defect which is beyond cure under the Income-tax Act, 1961, thus making the orders of the lower authorities, void ab initio.

It is further submitted that the aforesaid additional ground of appeal is purely legal in nature and does not involve any fresh investigation into facts of the case. The Appellant by way of this application, craves leave of the Hon'ble Bench to raise the aforesaid additional ground.

In view of the decision of the Hon'ble Supreme Court in the case of ***National Thermal Power Co. Ltd. vs CIT: 229 ITR 383*** *as also the decision in the case of* ***Jute Corporation of India vs. CIT: 187 ITR 688*** *and the discretion vested with your Honours under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963, it is prayed that the aforesaid additional ground of appeal may kindly be admitted and adjudicated on merits.*

The Appellant trusts that its request shall be acceded to."

5. During the course of hearing, the ld. Counsel for the assessee reiterated the contents of the aforesaid application and requested for admission of the additional ground.

6. In his rival submissions, the ld. CIT DR opposed the admission of the additional ground but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

7. After considering the submissions of both the parties, it is noticed that the assessee has raised legal ground which does not involve any fresh investigation into the facts of the case. Therefore, the same is admitted by keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT reported at 229 ITR 383 (supra).

8. During the course of hearing, the ld. Counsel for the assessee at the very outset stated that the assessment in this case, has been framed by the AO on the erstwhile amalgamating company i.e. M/s Akzo Nobel Car Refinishes India Pvt. Ltd. which is not in existence. Therefore, the assessment framed is *void ab initio*. The ld. Counsel for the assessee furnished the sequence of events as under:

S. No.	*Points*	*Particulars*	*Remarks*
1.	*Amalgamation effective from:*	*April 1, 2011*	
2.	*Facts of merger brought to notice of AO*	*Yes (vide letters dated June 11, 2012, filed before AO's office on June 19, 2012)*	*Attached as Annexure 2 along with the additional ground of appeal*

3.	*Date of passing draft assessment order*	*March 12, 2013*	*Passed in the name of erstwhile entity, i.e. Akzo Nobel Car Refinishes India Pvt. Ltd., without any mention of the transferee entity's name, i.e. Akzo Nobel India Limited.* *(refer pages 121 of appeal set)*
4.	*Date of transfer pricing order*	*January 4, 2013*	*Passed in the name of erstwhile entity, i.e. Akzo Nobel Car Refinishes India Pvt. Ltd., without any mention of the transferee entity's name, i.e. Akzo Nobel India Limited.* *(refer page 124 of the appeal set)*
5.	*Date of DRP directions*	*December 24, 2013*	*Passed in the name of erstwhile entity, i.e. Akzo Nobel Car Refinishes India Pvt. Ltd., without any mention of the transferee entity's name, i.e. Akzo Nobel India Limited.* *(refer page 11 of the appeal set)*
6.	*Date of final assessment order*	*January 31, 2014*	*Passed in the name of erstwhile entity, i.e. Akzo Nobel Car Refinishes India Pvt. Ltd., without any mention of the transferee entity's name, i.e. Akzo Nobel India Limited.* *(refer page 1 of appeal set)*

9. The reliance was placed on the following case laws:

- *Spice Entertainment Ltd. Vs Commissioner of Service Tax in ITA Nos. 475 & 476/2011 order dated03.08.2011 (Del. HC)*
- *CIT, New Delhi Vs M/s Spice Entertainment Ltd. in Civil Appeal No. 285/2014 (SC)*
- *Akzo Nobel Chemicals (India) ltd. (merged with Akzo Nobel India Ltd.) Vs DCIT in ITA No. 1225/Pun/2015 order dated 09.02.2018*
- *CIT(C)-II Vs Micra India Pvt. Ltd. in ITA 441, 444, 445, 446, 452 & 461/2013 order dated 22.01.2015*
- *DCIT Vs Transcend MT Services Pvt. Ltd. in ITA No. 2697/Del/2014 order dated 30.11.2017*
- *Genpact Infrastructure (Bhopal) Pvt. Ltd. (now merged with Genpact India) Vs DCIT in ITA No. 2025/Del/2014 order dated 09.02.2018*
- *Shell India Markets Pvt. Ltd. Vs ACIT in ITA No. 1055/Bang/2011 order dated 20.12.2017*
- *CIT-III Vs Dimension Apparels (P.) Ltd. (2015) 370 ITR 288 (Del.)*

- *Maruti Suzuki India Ltd. Vs DCIT, Circle-16(1), New Delhi (2016) 72 Taxmann.com 164 (Del.)*
- *Pr. CIT-6, New Delhi Vs Maruti Suzuki India Ltd. (2017) 85 Taxmann.com 330 (Del.)*

10. In his rival submissions, the ld. CIT DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the erstwhile company M/s Akzo Noble Car refinishes India Pvt. Ltd. in whose hands, the assessment was framed by the AO, amalgamated w.e.f. 01.04.2011 with M/s Akzo Nobel India Ltd. and this fact was brought to the knowledge of the AO by the assessee vide letter dated 11.06.2012 which was received in his office on 19.06.2012, copy of the same is placed on record as Annexure-2 annexed to the assesseeôs compilation. It is also noticed that the TPO passed the order dated 04.01.2013 on the erstwhile Akzo Nobel Car Refinishes India Pvt. Ltd. but ignored the aforesaid intimation furnished by the assessee before the AO on June 19, 2012. The AO passed the draft assessment order dated 12.03.2013 and the ld. DRP also issued the directions vide order dated 24.12.2013, thereafter, the AO framed the final assessment order dated 31.01.2014 in the name of erstwhile entity i.e. Akzo Nobel Car Refinishes India Ltd. without any mention of the transferee entity name i.e. Akzo Noble India Ltd. From the aforesaid narrated facts, it is clear that the assessment has been

framed by the AO on an entity which was not in existence after the order dated 18.04.2012 passed by the Honôble High Court of Karnataka at Bangalore, copy of which is placed at page nos. 2 to 37 of the assesseeôs compilation.

12. It is noticed that an identical issue having similar facts has been decided by this bench of the Tribunal wherein one of us (Accountant Member is the author) in ITA No. 2025/Del/2014 for the assessment year 2009-10 in the case of M/s Genpact Infrastructure (Bhopal) Pvt. Ltd. (now merged with Genpact India) Vs DCIT, Circle-12(1), New Delhi (supra) wherein the relevant findings have been given in paras 8 to 14 of the order dated 09.02.2018 which read as under:

> *"8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the assessee M/s Genpact Infrastructure (Bhopal) Pvt. Ltd. amalgamated with M/s Genpact India in pursuant to the order dated 19.11.2010 w.e.f. 01.04.2010 of the Hon'ble Delhi High Court and this fact was brought to the notice of the AO (ACIT, Circle-1, Jaipur) vide letter dated 24.01.2011 which was received in the office of Additional Commissioner of Income Tax, Range-12, New Delhi on 03.02.2011. In the said letter it has been mentioned as under:*
>
> > *"Genpact Infrastructure (Bhopal) Private Limited was an Indian company engaged in providing Information Technology ("IT") / IT Enabled Services (ITES), which had changed its registered office Co Delhi Information Technology Park, Shastri Park, New Delhi. It has been assessed to income-tax with your office vide PAN AACCG6569R.*

Genpact India is another Indian company, engaged in rendering ITES. It maintains its registered office at Delhi Information Technology Park, Shastri Park, New Delhi. Genpact India is presently assessed to income-tax with Circle I2(1), New Delhi vide PAN AAACG9163H.

Pursuant to a scheme of amalgamation under section 391/394 of the Companies Act, 1956, as sanctioned by the Hon'ble Delhi High Court vide order dated November 19, 2010. Genpact Bhopal has been amalgamated with Genpact India. Consequently, Genpact Bhopal has ceased to exist as separate legal entity and all its assets and liabilities along with all rights, obligations, licenses, registrations etc. stands transferred to Genpact India w.e.f. April 1, 2010 being, the appointed date under the Scheme of Amalgamation.

A copy of the order passed by the Hon'ble Delhi High Court and the acknowledgment of fifing, the same with the office of Registrar of Companies on December 31, 2010 is collectively enclosed as Annexure A for your records.

We request your office to take the above record."

It has further been mentioned as under:

"Further, in view of the aforesaid, we hereby surrender the PAN AACCG6569R issued to Genpact Bhopal and request your office to transfer all the files/records pertaining to Genpact Bhopal maintained by your office, to Circle 12(1), New Delhi and consequently, enable the office of Circle 12(1), New Delhi to issue all pending refunds due to Genpact Bhopal to Genpact India, it being the amalgamated company.

We believe that our above request will be acceded to."

9. From the aforesaid letter, it is crystal clear that information was received by the AO on 03.02.2011 relating to the amalgamation of the assessee with M/s Genpact India and a reference was made by the AO u/s 92CA(1) of the Act to the TPO who vide letter dated 17.02.2012 asked the assessee to submit the document maintained in terms of Section 92D of the Act. The TPO passed the order u/s 92CA(3) of the Act on 29.01.2013. Thereafter, the AO passed the draft assessment order dated 12.03.2013 and the assessee raised the objections before the ld. DRP who issued the direction to the TPO/AO vide order dated 26.12.2013 and the TPO on the directions of the ld. DRP passed the order giving effect of the direction of the DRP-1 u/s 24(5) of the Act on 21.01.2014. All the aforesaid orders were passed in the name of erstwhile entity i.e. M/s Genpact Infrastructure (Bhopal) Pvt. Ltd. without any mentioning of the transferee name i.e. M/s Genpact India. Therefore, it is crystal clear from the aforesaid narrated facts that the entity M/s Genpact Infrastructure (Bhopal) Pvt. Ltd. which amalgamated with M/s Genpact India, was not in existence when the TPO/AO/DRP passed their respective orders.

10. On a similar issue, the ITAT Delhi Bench I-1, New Delhi having the same combination passed a detailed order authored by the AM in the case of M/s Maruti Suzuki India Ltd. vs. Dy. CIT reported in (2016) 72 taxmann.com. 164. and the relevant findings have been given as under:

> *"10. We have considered the submissions of both the parties and carefully gone through the material le on the record. In the present case, it is an admitted fact that the amalgamating company M/s Powertrain India Ltd. amalgamated with M/s Maruti Suzuki India Ltd. w.e.f. 01.04.2012, as a of scheme of amalgamation duly approved by the Hon'ble Delhi High Court vide order dated 2013 and the assessment in this has been framed by the AO vide order dated 03.03.2015. Therefore, dear that when the assessment order was passed on 03.03.2015, M/s Suzuki Powertrain India*

Ltd. lot inexistence. It is also noticed that the aforesaid fact was in the knowledge of the department as the informed vide various letters mentioned in para 5 of the former part of this order which were to the various Tax Authorities. However, the AO in spite of knowing this fact that M/s Suzuki in India Ltd. amalgamated with M/s Maruti Suzuki India Ltd., made the reference to the TPO and -sued the notice dated 07.11.2014 to the non-existent entity i.e. M/s Suzuki Powertrain India Ltd.

11. A similar issue the Hon'ble Jurisdictional High Court in the case of Micra India (P.) Ltd. (supra) under:

> *"In the instant case, no doubt there was participation during the course of assessment; however, the Assessing Officer, despite being told that the original company was no longer in existence, did not Le remedial measures and did not transpose the transferee as the company which had to be assessed, instead, he resorted to a peculiar procedure of describing the original assessee as the one in existence; order also mentioned the transferee's name below that of assessee's company. Now, that did not to the assessment being completed in the name of the transferee-company. According to the sing Officer, the assesseecompany was still in existence. Clearly, this was a case where the assesssment was contrary to law, as having being completed against a non-existent company. The Tribunal's decision is, in the circumstances, justified and warranted."*

12. Similarly, the Hon'ble Jurisdictional High Court in the case of Spice Infotainment Ltd. v. CIT [IT Nos. 475 & 476 of 2011, dated 3-8-2011] held as under:

> *"No doubt, M/s Spice was an assessee and as an incorporated company and was in existence when it the returns in respect of two assessment years in question. However, before the case could be ted for*

scrutiny and assessment proceedings could be initiated, M/s Spice got amalgamated with M Corp Pvt. Ltd. It was the result of the scheme of the amalgamation filed before the Company Judge of this Court which was dully sanctioned vide orders dated 11th February, 2004. With this amalgamation made effective from 1st July, 2003, M/s Spice ceased to exist. That is the plain and le effect in law. The scheme of amalgamation itself provided for this consequence, inasmuch as simultaneous with the sanctioning of the scheme, M/s Spice was also stood dissolved by specific of this Court. With the dissolution of this company, its name was struck off from the rolls Companies maintained by the Registrar of Companies. A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. In view of the aforesaid clinching position in law, it is difficult to digest the circuitious route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect. After the sanction of the scheme on 11th April, 2004, the Spice ceased to exit w.e.f 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said "dead person". When notice under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record Instead, the AO made the assessment in the name of M/s Spice which was nonexisting entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void such a defect cannot be treated as procedural defect. Mere participation by

the appellant would be of no effect as there is no estoppel against law."

It has been further held as under:

"Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a 'dead per son'."

13. In the present case also as the assessment was framed in the name of non-existing entity i.e. M/s Suzuki Powertrain India Ltd. which amalgamated with M/s Maruti Suzuki India Ltd. and this irregularity was not curable. Therefore, the assessment order passed by the AO in the name of non- existing entity was void ab initio and deserves to be quashed, we order accordingly.

14. In the present case, the contention of the Id. CIT DR was that the assessment was rightly framed by the AO on the assessee who filed the return of income and when the income was earned, it was inexistence. This controversy has been settled by the Hon'ble Jurisdictional High Court in the case of CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288/[2014] 52 taxmann.com 356 (Delhi) wherein it has been held as under:

"Section 170(2) of the Income-tax Act, 1961, makes it clear that in the case of amalgamation, the assessment must be made on the successor (i.e., the amalgamated company). Section 176 which contains provisions pertaining to a discontinuation of business, does not apply to a case of amalgamation. The language of section 159 evidently only applies to natural persons and

cannot be extended through a legal fiction, to the dissolution of companies. Once it is found that assessment is framed in the name of non-existing entity it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of section 292B. Participation by the amalgamated company in assessment proceedings would not cure the defect because "there can be no estoppels against law."

15. In the present case also when the assessment was framed by the AO vide order dated 29.12.2015 in the name of M/s Suzuki Powertrain India Ltd., the said company had already amalgamated with M/s Maruti Suzuki India Ltd. and therefore, it was not inexistence. Moreover, it is clear from the provisions of Section 170(2) of the Act that in the case of amalgamation, the assessment must be made on the successor i.e. the amalgamated company and not on the predecessor i.e. amalgamating company. Therefore, in the present case, the assessment framed by the AO vide order dated 29.12.2015 on the amalgamating company i.e. M/s Suzuki Powertrain India Ltd. which was not inexistence on the date of passing the assessment order was not valid and as such the same is quashed. Since we have allowed ground No. 1 of the assessee and assessment order is quashed, therefore, no finding is given on the other issues raised by the assessee."

11. It is also relevant to point that the aforesaid order of the ITAT in the case of Maruti Suzuki Pvt. Ltd. vs. DCIT, Circle 16(1), New Delhi (Supra) has been upheld by the Hon'ble Jurisdictional High Court vide order dated 4th September, 2017 in the case of Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki Private Ltd., reported at (2017) 85 Taxmann.com 330 (supra) wherein it has been held as under:

"The revenue has repeatedly brought the issue before the Court in a large number of cases where, in more or less identical circumstances, the Assessing Officer had passed the assessment order in the name of the entity

that had ceased to exist as on the date of the assessment order. In many of these cases, as in the present case, the Assessing Officer, after mentioning the name of the Amalgamating Company as the assessee, mentioned below it the name of the Amalgamated Company. The submission of revenue that under section 292B, the successor-interest is precluded from raising an objection if it has participated in the assessment proceedings was negatived in Spice Infotainment Ltd. v. CIT [2012] 247 CTR (Del.) 500 wherein it was held that once it was found that the assessment was framed in the name of a non-existent entity, it did not remain a procedural irregularity of the nature which could be cured by invoking the provisions of section 292-B. The legal position having been made abundantly clear, there is no hesitation in holding that impugned order passed by Tribunal does not require any interference The appeal is accordingly dismissed."

12. Recently the Hon'ble Apex Court dismissed the SLP moved by the Department in the case of M/s Spice Enfotainment Ltd. which has been followed in the aforesaid referred case of M/s Maruti Suzuki Pvt. Ltd. vs. DCIT, vide order dated 2nd November, 2017.

13. In the present case also, as we have already pointed out that the assessment was framed by the AO on the non-existent amalgamated company, not on the amalgamating company, therefore, the assessment framed was void ab initio and the same was rightly quashed by the ld. CIT(A). Since, we have quashed the assessment framed by the AO therefore no separate finding is being given on the other issues raised in the Departmental appeal.

14. Before parting, it is relevant to point out that in the order relied by the ld. Sr. DR i.e. in the case of CIT, Central-1 Vs M/s Shaw Wallace Distilleries Ltd. (supra), the facts were totally different because in the said case, the assessee had not brought to the notice of the department in particular the Assessing Officer, the fact about the amalgamation sanctioned by the Hon'ble High and it had also filed its return of income for the subsequent assessment year. Therefore, the assessee itself

had not acted upon the amalgamation but in the present case, the facts are totally different as the assessee brought to the notice of the AO about the amalgamation of the erstwhile Genpact Infrastructure (Bhopal) Pvt. Ltd. which amalgamated with M/s Genpact India w.e.f. 01.04.2010 vide order of the Hon'ble Delhi High Court dated 19.11.2010. Therefore, the case relied by the ld. Sr. DR is of no help to the department."

13. So, respectfully following the aforesaid referred to order dated 09.02.2018, we hold that the assessment framed by the AO on the non-existent company i.e. Akzo Noble Car Refinishes India Pvt. Ltd. is *void ab initio.* Accordingly, the same is quashed.

14. In ITA No. 2468/Del/2015 for the assessment year 2010-11, the facts are identical as were involved in ITA No. 2073/Del/2014 for the assessment year 2009-10, therefore, our finding given in the former part of this order shall apply *mutatis mutandis.*

15. In the result, the appeals of the assessee are allowed.

(Order Pronounced in the open Court on 10/07/2018)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 10/07/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR